IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-04-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 13809 of 2007
and
M.P. No. 1 of 2007
-o-

K. Krishnan
Proprietor
M/s. Ambal Traders
19/8, Aziz Mulk 5th Street
Thousand Lights
Chennai - 600 006 .. Petitioner

Versus

1. The Commissioner
   The Block Development Officer
   Panchayat Union
   Sholavaram
   Tiruvellore District

2. The Project Officer
   Directorate of Rural Development
   Authority
   Thiruvellore District

3. M/s. Usha International
   No.89, Mount Poonamallee High Road
   Ramavaram
   Chennai - 600 089 .. Respondents

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Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. K.J. Rebella

For Respondents : Mr. I. Paranthamen
Government Advocate for RR1 & 2

ORDER

This writ petition is listed today for admission and I heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents 1 and 2.

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2. The prayer in this writ petition is for a Writ of Certiorarified Mandamus calling for the records of the first respondent in letter vide Rc.No.1701/2006 A2/ dated 29.03.2007 and quash the same as illegal and arbitrary and consequently direct the first respondent to issue the Order in favour of the petitioner for supply of 136 sewing machines at the rate of Rs.4,940/- as quoted by the petitioner against Tender No.SGRY-I-2006-07 (DP & BP).

3. The learned counsel appearing for the petitioner submitted that the petitioner has participated in the tender invited by the first respondent for supply of 136 sewing machines and quoted Rs.4,940/- per machine, whereas, the third respondent herein quoted Rs.5,877/- per machine, which was accepted by the first respondent; that the first respondent has passed non-speaking order and rejected his tender and prayed for quashing of the same.

4. Mr. Paranthamen, learned Government Advocate appearing for the respondents 1 and 2 submitted that the first respondent called for tenders on 15.03.2007 in which one N.R. Velayudaraja had quoted Rs.5,690/-, M/s. Usha International, the third respondent quoted Rs.5,877/- and the petitioner has offered at Rs.4,940/- and they were directed to display their samples, but the said Velayudaraja has not turned up, hence, the tender submitted by him was rejected; that in so far as the petitioner is concerned, though he has quoted lesser rate than the third respondent, the model displayed by him was inferior in quality and the same was found to have not been sold in the market, it is not having ISI mark, besides that the spares and service facilities for the said model is not available; that the Sunmica table provided is not of good quality and also the bottom cast iron stand is not having brand name, which is nothing but a local brand, hence, the petitioner's tender was rejected; that the third respondent produced ISI mark brand sewing machines and their service facilities are available in almost all the place, hence, the tender submitted by the third respondent was accepted and supply order was issued in favour of the third respondent on 21.03.2007 and supply was also effected by the third respondent on 30.03.2007 under invoice Nos. 0001138302, 0001138318, 0001138316, 0001138317, 0001138319, 000113811, which was later entered in the stock register maintained by the respondents 1 and 2 and prayed for dismissal of the writ petition.

5. This Court carefully considered the argument of counsel for both sides and perused the material records placed. Of course, in the impugned order dated 29.03.2007, no reason was assigned by the first respondent for not accepting the tender of the petitioner, but simply stated 'not accepted'. In a matter relating to tender, notwithstanding the lowest amount offered by the tenderers, it is open to the authority to accept higher rate quoted, but at the same time it is the bounden duty of the authorities to assign reasons for rejecting lowest rate, but no such reason is mentioned. The learned Government Advocate

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appearing for the respondents 1 and 2 submitted, relying on the written instructions that the model displayed by the petitioner is assembled one, not a branded one, not being sold in the market, the spares and service are not available besides that the sunmica table and bottom cast iron stand are local product, hence, they felt it not suitable to supply the same to the downtrodden. It is further pointed out by the learned Government Advocate that the third respondent has offered ISI branded machines, which is one of the leading manufacturers in India and their service facilities are available in all the places, hence, the first respondent rightly accepted the said offer. The right to choose cannot be considered to be an arbitrary power. What is paramount is public interest. Even before this Court, the petitioner not even demonstrated the brand name of his product, experience in the field and service facilities provided. Hence, though the impugned order is a non-speaking order, the conclusion arrived at is based on valid reasons. Moreover, in this case, the third respondent effected supply.

6. The power of the High Court can be invoked only for enforcement of fundamental rights or other legal rights or arbitrary exercise of power by the Government bodies. No such element is found in this case. In this context, it would be relevant to refer to the order passed by me in WP No. 4769 of 2006, which was reported in (A. Soosai Mary vs. Superintending Engineer, Public Works Department, Trichy) (2007) 2 MLJ 787 wherein I held in Para-9 thus:-

> " 9. If a tender is given, it is merely an offer and only if it is accepted absolutely, any contract can come into force, otherwise, no right flows from such an offer. The principles of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. Article 14 of the Constitution have to be kept in view when accepting or refusing the tender. However, there can be no question of infringement of Article 14 of the Constitution of India when the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. As regards awarding of contract, what is paramount is public interest. It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or unreasonable or such rejection is in public interest and for valid and good reasons. In this case, no such arbitrariness was found. "

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7. Considering the above said facts, this Court is satisfied with the rejection of the tender of the petitioner, hence, interference of this Court is not warranted. The writ petition is dismissed. No costs. Conseuently, connected miscellaneous petition is closed.
Rsh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Commissioner
Panchayat Union
Sholavaram
Tiruvellore District

2. The Project Officer
Directorate of Rural Development
Authority
Thiruvellore District

+ one cc to M/S. K.T. Rebella, Advocate sr no. 27232
+ one cc to the Government Pleader sr o. 27775

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\nm(07.05.07)

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